

Ram Raid Offending and Related Measures Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is introduced under Standing Order 267(1)(a). That Standing Order permits an omnibus Bill to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is youth-dominated offending. The single broad policy is to reduce youth-dominated offending by increasing accountability for those who engage in the criminal behaviour covered by the Bill.

The Ram Raid Offending and Related Measures Amendment Bill provides measures aimed to reduce criminal behaviour that is predominantly carried out by children and young people.

The Bill amends the following Acts:

- the Crimes Act 1961 by adding *new section 231B* to specifically criminalise ram-raiding;
- the Criminal Investigations (Bodily Samples) Act 1995 to allow the taking of bodily samples from 12 and 13 year olds who are proceeded against in the Youth Court for the new ram-raiding offence;
- the Oranga Tamariki Act 1989 to—
 - allow 12 and 13 year olds to be proceeded against for the new ram raid offence in the Youth Court without being a previous offender;
 - include a corresponding factor to that added to the Sentencing Act 2002 by the Bill to be considered where a young person is being sentenced for offending, if they livestreamed the offending, posted a copy of the livestreaming online, or distributed a copy of the livestreaming by means of a digital communication:

- the Sentencing Act 2002 by adding 2 new aggravating factors for sentencing—
 - for an adult who aids, abets, incites, counsels, or procures any child or young person to commit any offence:
 - for a person who livestreamed the offending, posted a copy of the live-streaming online, or distributed a copy by means of a digital communication.

This Bill responds in a practical and meaningful way to offending that is predominantly undertaken by young people. It will disincentivise that behaviour by better holding to account those young people and ensuring that there are greater interventions and consequences for their criminal behaviour.

This Bill will ensure that young offenders, as well as those who encourage or enable them to offend, face greater accountability for offending.

The measures in this Bill must be considered alongside other Government initiatives focused on breaking the cycle of offending, including the enhanced fast-track programmes to respond to the most prolific young offenders by intervening early and intensively to prevent further offending and harm.

A new offence will specifically address ram-raiding. Ram raids cause significant property damage and cause considerable harm to the victims and their livelihoods. It is important that offenders know that their offending has consequences, not only for the victims but for the offenders themselves. They will be held to account for their actions in damaging with a vehicle and entering others' property, including retail property.

This new offence will differentiate ram-raiding from intentional property damage and burglary. It will properly recognise the specific form of conduct associated with this offending and ensure that it is recognised and charged as a discrete form of criminal harm.

The new offence will carry a maximum penalty of 10 years' imprisonment.

The amendments allowing the taking of bodily samples is consistent with existing law for 12 and 13 year olds who are proceeded against under section 272 of the Oranga Tamariki Act 1989. Further, the grounds for taking a bodily sample under the Criminal Investigations (Bodily Samples) Act 1995 for the new ram raid offence will be aligned with those circumstances in which a bodily sample may be taken for burglary, as they are closely related offending.

The Bill will also allow 12 and 13 year olds to be charged in the Youth Court for this offence without being a previous offender. This will give Police and Oranga Tamariki a wider range of options to deal with child offenders, for example, giving Police the ability to apply for bail conditions or for the offenders to be held in the custody of Oranga Tamariki. It will ensure that a better range of immediate responses are available for these children. It will allow a greater range of interventions that could make a more significant difference to stop repeat offending, provide the necessary support, and hold them to account for their actions.

In addition to a new offence, the Bill introduces 3 new factors to be considered at sentencing.

Two of these factors will be placed in the Sentencing Act 2002 and another in the Oranga Tamariki Act 1989. Each factor will serve to aggravate the offending.

The first aggravating factor, to be included in the Sentencing Act 2002, will require the sentencing Judge to take into account that an adult has aided or abetted a young person to offend. This aggravating factor will apply to all offending, including ram-raiding or, for example, drug offending. If adults take advantage of the vulnerability of young people by encouraging them to offend, including on behalf of the adult, it is appropriate that this be considered as an aggravating factor at sentencing. The aim is to deter adults from exploiting children and young people and leading them into a life of crime.

The Bill also introduces a second aggravating factor in the Sentencing Act 2002, requiring the sentencing Judge to take into account whether an offender livestreamed or posted their offending online. This behaviour increases the reach of offending, both exacerbating the harm to victims and glamorising offending, which may encourage copy-cat offences. This kind of conduct, which is common with offending such as ram raids, will now be considered by a Judge in assessing the appropriate sentence to be imposed on an offender.

A corresponding factor is to be included in the Oranga Tamariki Act 1989, to require the Youth Court, in determining the appropriate response where a charge against a young person is proved, to consider whether that young person livestreamed or posted their offending online.

Departmental disclosure statement

The Ministry of Justice and Oranga Tamariki are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=283>

Regulatory impact statement

Cabinet's impact analysis requirements apply to this Bill, however there is no accompanying regulatory impact statement. The Treasury has agreed that agencies will develop supplementary impact analysis regarding the proposals after introduction.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 states that the Bill comes into force on the day after Royal assent.

Part 1

Amendments to Crimes Act 1961

Clause 3 states that *Part 1* amends the Crimes Act 1961.

Clause 4 amends section 168 by adding the new offence established by *clause 6* to the list of offences in subsection (2). Under section 168(1)(a), culpable homicide is also murder, if the offender means to cause grievous bodily injury for the purpose of facilitating the commission of any of those offences (including the new offence established by *clause 6*), whether they mean or do not mean death to ensue, or know or do not know that death is likely to ensue.

Clause 5 makes 2 amendments to section 231(2) and (3) so that these subsections apply to the new offence established by *clause 6*.

Clause 6 inserts *new section 231B*, which establishes a new offence of using a motor vehicle to damage a building and enter it with intent to commit an imprisonable offence. The offence requires proof that a motor vehicle was used to damage a building. The persons who may be liable for this use of the vehicle are—

- the driver who uses the vehicle to damage the building to allow entry into it;
- a passenger who knows that the vehicle will be used to damage a building to allow entry into it;
- a person who waits outside the building and who knows that the vehicle will be used to damage the building to allow entry into it.

In each case, the person is liable if either the vehicle enters into the building or they enter the building themselves. They must enter without authority and with intent to commit an imprisonable offence inside the building.

Part 2

Amendments to Criminal Investigations (Bodily Samples) Act 1995

Clause 7 states that *Part 2* amends the Criminal Investigations (Bodily Samples) Act 1995 (the **principal Act**).

Clause 8 adds *new subparagraph (iia)* to section 18(1)(b). The effect is that a Judge may order a bodily sample be given by a suspect who was 12 or 13 years old at the time they are alleged to have committed the new offence established under the Crimes Act 1961 by *clause 6*. The order can only be made if other relevant criteria set out in section 18 also apply.

Clause 9 adds *new subparagraph (iia)* to section 23(1)(b). The effect is that a Judge may order a bodily sample be given by a person who was 12 or 13 years old at the time they are alleged to have committed the new offence established under the Crimes Act 1961 by *clause 6*. The order can only be made if an application for a juvenile compulsion order has been made and the Judge is satisfied that other relevant criteria set out in section 23 also apply.

Clause 10 adds the new offence established by *clause 6* to Part 1 of Schedule 1. The effect is that the new offence will become a relevant offence for the purposes of the principal Act, including allowing for the taking of bodily samples under the principal Act.

Part 3 Amendments to Oranga Tamariki Act 1989

Clause 11 states that *Part 3* amends the Oranga Tamariki Act 1989 (the **principal Act**).

Subpart 1—Substantive amendments to principal Act

Clause 12 adds 3 new definitions to section 2 for terms that are used in *new section 284(1)(fa)* (see *clause 14*). These are digital communication, livestream, and post.

Clause 13 adds *new paragraph (ba)* to section 272(1) to add a fourth situation in which the Youth Court may hear proceedings under the Criminal Procedure Act 2011 against a child. This is where a child is aged 12 or 13 years and the offence is the new offence established under the Crimes Act 1961 by *clause 6*.

Clause 13 also adds *new paragraph (ba)* to section 272(1B). The effect is that if a charge under the new offence is proven in the Youth Court, the child will be a previous offender for the purpose of section 272(1)(c).

Clause 14 adds *new paragraph (fa)*, which contains a new factor to be taken into account in sentencing by the Youth Court, to section 284(1). This is where the young person did any of the following:

- they livestreamed all or part of the offending on the Internet or an online application or similar:
- they posted all or part of a record of the offending on the Internet or an online application or similar:
- they distributed all or part of a record of the offending to others by means of a digital communication.

Subpart 2—Consequential amendments to principal Act

Clauses 15 to 20 make consequential amendments to 6 sections in the principal Act. References to section 272(1)(b) or (c) are changed to include a reference to *new paragraph (ba)* that is added to section 272(1) by *clause 13*.

Part 4 Amendments to Sentencing Act 2002

Clause 21 states that *Part 4* amends the Sentencing Act 2002.

Clause 22 adds 3 new definitions to section 4 for terms that are used in *new section 9(1)(cc)* (see *clause 23*). These are digital communication, livestream, and post.

Clause 23 adds *new paragraph (cb)*, which contains a new aggravating factor to be taken into account in sentencing, into section 9(1). This is where an adult offender is convicted as a party (within the meaning of section 66) to an offence committed by a child or young person.

Clause 23 also adds *new paragraph (cc)*, which contains a second new aggravating factor to be taken into account in sentencing, into section 9(1). This is where the offender did any of the following:

- they livestreamed all or part of the offending on the Internet or an online application or similar:
- they posted all or part of a record of the offending on the Internet or an online application or similar:
- they distributed all or part of a record of the offending to others by means of a digital communication.

Hon Ginny Andersen

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Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendments to Crimes Act 1961		
3	Principal Act	2
4	Section 168 amended (Further definition of murder)	3
5	Section 231 amended (Burglary)	3
6	New section 231B inserted (Using motor vehicle to damage building and enter it with intent to commit imprisonable offence)	3
	231B Using motor vehicle to damage building and enter it with intent to commit imprisonable offence	3
Part 2		
Amendment to Criminal Investigations (Bodily Samples) Act 1995		
7	Principal Act	3
8	Section 18 amended (Application for order authorising taking of bodily sample from person under 18)	3
9	Section 23 amended (Judge may authorise bodily sample to be taken)	4
10	Schedule 1 amended	4
Part 3		
Amendments to Oranga Tamariki Act 1989		
11	Principal Act	4

**Ram Raid Offending and Related Measures
Amendment Bill**

	Subpart 1—Substantive amendments to principal Act	
12	Section 2 amended (Interpretation)	4
13	Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)	4
14	Section 284 amended (Factors to be taken into account on sentencing)	5
	Subpart 2—Consequential amendments to principal Act	
15	Section 258 amended (Functions of family group conference)	5
16	Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)	5
17	Section 272A amended (Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c))	5
18	Section 276 amended (Child or young person may forgo right to jury trial and elect to have proceedings determined by Youth Court)	5
19	Section 280A amended (Court may refer case to person who commenced proceeding to be dealt with as child offending care or protection proceeding under Part 2)	5
20	Section 365 amended (Chief executive may place children and young persons in residences)	6
	Part 4	
	Amendments to Sentencing Act 2002	
21	Principal Act	6
22	Section 4 amended (Interpretation)	6
23	Section 9 amended (Aggravating and mitigating factors)	6

The Parliament of New Zealand enacts as follows:

- | | | |
|----------|---|---|
| 1 | Title | |
| | This Act is the Ram Raid Offending and Related Measures Amendment Act 2023 . | |
| 2 | Commencement | 5 |
| | This Act comes into force on the day after Royal assent. | |

Part 1
Amendments to Crimes Act 1961

- | | | |
|----------|---------------------------------------|----|
| 3 | Principal Act | |
| | This Part amends the Crimes Act 1961. | 10 |

4 Section 168 amended (Further definition of murder)

After section 168(2)(j), insert:

- (ja) **section 231B** (using motor vehicle to damage building and enter it with intent to commit imprisonable offence):

5 Section 231 amended (Burglary)

5

- (1) In section 231(2), replace “section 232” with “sections **231B** and 232”.
(2) In section 231(3), replace “section 232” with “sections **231B** and 232”.

6 New section 231B inserted (Using motor vehicle to damage building and enter it with intent to commit imprisonable offence)

After section 231A, insert:

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231B Using motor vehicle to damage building and enter it with intent to commit imprisonable offence

- (1) A person commits an offence and is liable to imprisonment for a term not exceeding 10 years if they use a motor vehicle to damage a building and enter the building without authority and with intent to commit an imprisonable offence in it. 15
- (2) For the purposes of this section, a person is to be treated as having used a motor vehicle to damage a building if—
- (a) they are the driver of the vehicle and they use it to damage the building to allow entry into it: 20
- (b) they are a passenger in the vehicle knowing that it will be used to damage the building to allow entry into it:
- (c) they are a person who waits outside the building knowing that the vehicle will be used to damage the building to allow entry into it.

Part 2

25

Amendment to Criminal Investigations (Bodily Samples) Act 1995

7 Principal Act

This Part amends the Criminal Investigations (Bodily Samples) Act 1995.

8 Section 18 amended (Application for order authorising taking of bodily sample from person under 18)

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After section 18(1)(b)(ii), insert:

- (ia) the offence under **section 231B** of the Crimes Act 1961 that is alleged to have been committed when the suspect was aged 12 or 13 years; or

- 9 Section 23 amended (Judge may authorise bodily sample to be taken)** 5
 After section 23(1)(b)(ii), insert:
- (ia) the offence under **section 231B** of the Crimes Act 1961 that is alleged to have been committed when the respondent was aged 12 or 13 years; or
- 10 Schedule 1 amended**
 In Schedule 1, Part 1, after the first item relating to burglary, insert:
- Using motor vehicle to damage building and enter it with intent to commit imprisonable offence **section 231B**
- Part 3
Amendments to Oranga Tamariki Act 1989**
- 11 Principal Act** 10
 This Part amends the Oranga Tamariki Act 1989.
- Subpart 1—Substantive amendments to principal Act
- 12 Section 2 amended (Interpretation)**
 In section 2(1), insert in their appropriate alphabetical order:
- digital communication** has the meaning given in section 4 of the Harmful Digital Communications Act 2015 15
- livestream** has the meaning given in section 119A of the Films, Videos, and Publications Classification Act 1993
- post**, in relation to a record of offending, means to upload, transfer, send, publish, share, or otherwise disseminate that record 20
- 13 Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)**
- (1) In section 272(1), replace “3 situations” with “4 situations”.
- (2) After section 272(1)(b), insert:
- (ba) where the child is aged 12 or 13 years, and the offence is using a motor vehicle to damage a building and enter it with intent to commit an imprisonable offence (*see* **section 231B** of the Crimes Act 1961): 25
- (3) After section 272(1B)(b), insert:
- (ba) the child has been charged with, and the Youth Court has found proved before it the charge against the child for, 1 or more offences under **section 231B** of the Crimes Act 1961; or 30

- 14 Section 284 amended (Factors to be taken into account on sentencing)**
- After section 284(1)(f), insert:
- (fa) that the young person did 1 or more of the following in relation to the offending for which they are being sentenced:
 - (i) they livestreamed all or part of the offending on the Internet or an online application or similar: 5
 - (ii) they posted all or part of a record of the offending on the Internet or an online application or similar:
 - (iii) they distributed all or part of a record of the offending to others by means of a digital communication: 10
- Subpart 2—Consequential amendments to principal Act
- 15 Section 258 amended (Functions of family group conference)**
- In section 258(1)(ba)(i), replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.
- 16 Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)** 15
- In section 272(2A), replace “subsection (1)(b) or (c)” with “subsection (1)(b), **(ba)**, or (c)”.
- 17 Section 272A amended (Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c))** 20
- (1) In the heading to section 272A, replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.
 - (2) In section 272A(1), replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.
- 18 Section 276 amended (Child or young person may forgo right to jury trial and elect to have proceedings determined by Youth Court)** 25
- In section 276(1)(a), replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.
- 19 Section 280A amended (Court may refer case to person who commenced proceeding to be dealt with as child offending care or protection proceeding under Part 2)** 30
- In section 280A(1), replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.

- 20 Section 365 amended (Chief executive may place children and young persons in residences)**
In section 365(3)(b), replace “section 272(1)(b) or (c)” with “section 272(1)(b), **(ba)**, or (c)”.

Part 4
Amendments to Sentencing Act 2002

5

21 Principal Act

This Part amends the Sentencing Act 2002.

22 Section 4 amended (Interpretation)

In section 4(1), insert in their appropriate alphabetical order:

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digital communication has the meaning given in section 4 of the Harmful Digital Communications Act 2015

livestream has the meaning given in section 119A of the Films, Videos, and Publications Classification Act 1993

post, in relation to a record of offending, means to upload, transfer, send, publish, share, or otherwise disseminate that record

15

23 Section 9 amended (Aggravating and mitigating factors)

After section 9(1)(ca), insert:

(cb) that the offender (being aged 18 years or over) was convicted as a party (within the meaning of section 66 of the Crimes Act 1961) to an offence committed by a child or young person (as defined in section 2(1) of the Oranga Tamariki Act 1989):

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(cc) that the offender did 1 or more of the following in relation to the offending for which they are being sentenced:

(i) they livestreamed all or part of the offending on the Internet or an online application or similar:

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(ii) they posted all or part of a record of the offending on the Internet or an online application or similar:

(iii) they distributed all or part of a record of the offending to others by means of a digital communication:

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